COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Public Utilities on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the rate policy for operator service providers	)	**D.P.U./D.T.E. 97-88/18 (Phase II)**

VERIZON MASSACHUSETTS' RESPONSE TO THE MOTION FOR CLARIFICATION

Verizon Massachusetts ("Verizon MA") responds to the Motion for Clarification ("Motion") filed by the New England Public Communications Council, Inc. ("NEPCC") on July 12, 2004, regarding the Department's June 23, 2004, Order ("Order") in the above proceeding. As explained below, the issues raised by NEPCC do not meet the applicable standard of review for clarification,[1] and/or are not ripe for decision. Therefore, the Motion should be dismissed.

[1] The Department's standard of review on clarification is well established. "Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning." Boston Edison Company, D.P.U. 92-1A-B, at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A, at 1-2 (1989). "Clarification does not involve reexamining the record for the purpose of substantively modifying a decision." Boston Edison Company, D.P.U. 90-335-A, at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

ARGUMENT

NEPCC raises two issues on clarification: (1) the effective date of new payphone line rates; and (2) the relationship between the new payphone line rates and the TELRIC based rates developed in D.T.E. 01-20. NEPCC Motion, at 3-5. Neither of those two issues warrant clarification by the Department.

First, in its Motion, NEPCC seeks clarification of the Department's statement that "on the ninetieth day following the date of issuance of the Department's Order approving Verizon's compliance filing, the new rates shall be effective." *Order*, at 35. NEPCC argues that this is inconsistent with the Department's directive that "[t]he proposed tariff pages shall have an effective date 90 days from the date of the compliance filing." *Order*, at 34. This is a moot point.

As recognized by NEPCC, Verizon MA's tariff compliance filing includes an October 6, 2004, effective date for the new *wholesale* payphone services tariff in accordance with Department directives. NEPCC Comments, at 3-4. Accordingly, there is no need for the Department to address this issue on clarification, as NEPCC requests.[2]

Second, NEPCC argues that the Department's June 23rd Order raises the "prospect that there is an inevitable tie in between decisions relating to what UNEs might be required under Section 251 and 252 and at what price, as applied to those obligations, and Verizon's wholly separate and independent obligations with respect to payphone access

[2] It should be noted that in its comments filed August 6, 2004, Verizon MA identified some tariff modifications that should be made to the proposed PSP tariff. Verizon MA's Reply Letter, at 2. Therefore, to ensure that Verizon MA can meet the October 6, 2004, tariff effective date, Verizon MA requests that the Department rule on its compliance filing and such proposed tariff changes no later than September 1, 2004.

rates under Section 276 and the *Payphone Orders*." NEPCC Motion, at 5. Contrary to NEPCC's claims, the Order is neither ambiguous nor vague regarding this issue.

In its Order, the Department states that it is "adopting TELRIC-based rates for payphone line services in this docket which are derived from the UNEs we established in D.T.E. 01-20" and, therefore, is "guided by this process by our related findings in the D.T.E. 01-20 proceeding." *Order*, at 27 n.22. Nothing in this Order states that the payphone line rates must remain static based on TELRIC-based prices established in D.T.E. 01-20. Indeed, the Department acknowledges that

> … some change in the UNE/TELRIC pricing regime may occur at the federal level and may have state-level implications. If significant change occurs, the Department may, either upon petition or <u>sua</u> <u>sponte</u>, review then-existing rates for their continued vitality in light of such a change.

Order, at 30 n. 26. This is a reasonable approach and requires no clarification.

What NEPCC seeks here is not "clarification" of the Department's ruling regarding TELRIC-based payphone line rates, but rather a guarantee that those rates will not change regardless of changes in the TELRIC/UNE pricing scheme. It is premature to decide future pricing issues in this proceeding. The Department has outlined in its Order the process for addressing such issues in the future, should they arise.[3] Accordingly, the Department should reject NEPCC's argument.

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[3] Moreover, should Verizon MA seek a change in payphone service rates in the future, this would require a tariff filing to revise Part M of D.T.E. MA No. 18 Tariff, which contains the applicable TELRIC-based payphone line rates.

CONCLUSION

As demonstrated above, NEPCC has failed to meet the standard for clarification of the Department's Order. Therefore, for the foregoing reasons, the Department should deny NEPCC's Motion.

Respectfully submitted,

VERIZON MASSACHUSETTS

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